

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule complies with sections 444.772, 444.774 and 444.778, RSMo by setting forth the requirements for surface mine operators in order to obtain the necessary permit from the Land Reclamation Commission.*

**10 CSR 40-10.020 Permit Application Requirements**

(1) The commission shall prescribe the form and content of the application to be submitted to the commission in order for an operator to obtain a mining permit. The applicant must submit the required information before a permit may be issued.

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(A) A completed application form supplied by the commission signed and dated by an officer of the applicant or other authorized representative of the applicant. The form shall contain at least the following information:

1. The applicant's name;
2. The name of an individual in charge of the operation;
3. The permanent and temporary post office address of the applicant;
4. The name of a person to contact about the application;
5. A legal description to the nearest one-quarter, one-quarter (1/4, 1/4) section and the estimated number of acres of any land to be affected by surface mining by the applicant during the succeeding twelve (12)-month term of the permit;
6. The source of the applicant's legal right to mine the land affected by the permit;
7. A list of permits which the applicant or any person associated with the applicant in a management function holds or has held **[under sections 444.500--444.789, RSMo;] that have been issued by the Land Reclamation Program. The definition of “person associated with the applicant in a management function” means any proprietorship, subsidiary corporation, parent corporation, sister corporation, successor corporation, or the applicant’s officers and directors if the applicant is a corporation and includes all partners if the applicant is a partnership;**
8. **[A list of the names of all persons with any ownership interest in the land or mineral to be mined, both surface and subsurface;] A list of every individual associated with the applicant in a management function responsible for compliance with sections 444.500 to 444.790 RSMo;**

and

9. The mineral to be mined;

(B) The authorized written consent of the applicant and any other persons necessary to grant access to the commission, director, his/her staff or other appropriate state agency staff to the area of land affected under the application or permit during all phases of operation and reclamation;

(C) On areas leased after August 28, 1990, the applicant shall obtain from the landowner a signed approval of the post-reclamation land use or shall provide other written proof that s/he has determined the post-reclamation land use in conjunction with the landowner. This landowner approval shall be required only for the original permit application unless there is a change in the post-reclamation land use;

(D) A plan of operation and reclamation which meets the requirements of 444.760--444.790, RSMo.

1. The operation plan for surface mine operators shall include:

A. A brief description of topsoil availability, removal and storage as outlined in 10 CSR 40-10.050(6);

B. A brief description and location of spoil placement and disposal;

C. A brief description of handling of acid materials, if applicable; and

D. A brief description of the location and arrangement of the pit if not delineated clearly on the map submitted with the application.

2. All applications shall contain a reclamation and operation plan for the lands and water within the proposed permit area.

3. The reclamation plan shall include, at a minimum:

A. A list of species used for reclamation and the seeding/planting rates;

B. Methods and timing of seeding/planting;

C. If required by the commission, references to support revegetation methods;

D. A brief description of the grading, topsoiling and revegetation schedules as outlined in 10 CSR 40-10.050(10); and

E. The land use that area is to be reclaimed to and the acreage of each.

4. In-stream operators must describe what measures will be taken to minimize impacts on the stream environment, that is, where possible, confining active mining operations to gravel bars rather than in flowing water, restricting haul roads through flowing water and restricting damage to stream banks or bank vegetation to the minimum required to transport the material out.

5. The applicant may provide either a short-term or long-term plan for operations and reclamation. A short-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection, which will occur over the one (1)-year term of the permit. A long-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection which will occur over more than one (1) year. Permits having long-term operation plans will be issued for one (1)-year terms, except that, upon renewal, the applicant is not required to resubmit an operation plan, provided that the operations will continue to be conducted in the manner originally proposed. Also, the operator only must acquire a permit for the portion of the area included in the long-term plan which will be affected over the upcoming one (1)-year term of the permit. But, in no instance shall the operator affect any area outside of the area included in the current approved permit;

(E) Two (2) different maps sufficient for the following purposes:

1. One (1) map sufficient to locate and distinguish the mining site from other mine sites in the general area of the county;

2. One (1) map of sufficient scale and detail to illustrate the following:

A. The names of any persons or businesses having any surface or subsurface interest in the lands to be mined, including owners or leaseholders of the land and utilities **as well as the names of all record landowners of real property located contiguous or adjacent to the property line of the property where the proposed mine plan area is located;**

**(I) Contiguous shall mean in actual contact, touching along a boundary or at a point;**

**(II) Adjacent shall mean immediately opposite from, as in across a road right of way, or across a river or stream;**

**(III) Neither definition shall include the names of any record landowners of contiguous real property or real property located in an adjacent state, but only land located in the State of Missouri.**

B. The boundaries and the acreage of each site, if proposing multiple sites, of all areas proposed to be affected over the permit term;

C. The approximate location of public roads located in or within one hundred feet (100') of the proposed permit area;

D. The date that the map was prepared, a north arrow and section, township and range lines;

E. The name of the creek or stream being mined, if an in-stream operation is proposed;

F. This map must be prepared on an original or clearly copied United States Geological Survey (USGS) seven and one-half (7 1/2) minute topographical map, county assessor map, Agricultural Stabilization Conservation Service (ASCS) aerial photos or up-to-date county ownership plats or on a map of equal or better quality; and

G. The locations of terraces, waterways, diversions and post-mining land use designations shall be identified on the permit map.

3. Both maps and all copies submitted must be clearly legible and must contain the company name, mine or site name, date of last map edit, scale indication (such as a scale bar or numerical ratio) and a symbol definition key for any special symbols used; and

4. If the applicant requests a permit for a portion of the area described in a long-term operation and reclamation plan, the applicant shall indicate the boundary of the proposed permit area and the boundary of the area proposed to be disturbed over the life of the mine on the map required by paragraph (2)(E)2. of this rule;

(F) All required fees based upon the type of operation and amount of production as follows:

1. An annual permit fee of five hundred dollars (\$500.00).
2. An annual site fee for each site listed on a permit of three hundred dollars (\$300.00). If surface mining operations are not conducted at a site for a total of six (6) months or more during any one permit year, the fee for such site for that year shall be reduced by fifty percent (50%) or to the amount of one hundred fifty dollars (\$150.00).
3. An annual acreage fee for each acre bonded by the operator of five dollars (\$5.00) per-acre for each acre permitted.
4. For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand (5,000) tons, the total cost of submitting an application shall be three hundred dollars (\$300.00).
5. In no case shall the total fee for any permit be more than two thousand five hundred dollars (\$2,500.00).
6. Fees imposed shall expire on December 31, 2007.

(G) The required bond, as specified in section 444.778, RSMo and described in 10 CSR 40-10.030; and

(H) [Proof that a public notice has been published in any newspaper with a general circulation in the counties ] At the time the application is deemed complete by the director, the applicant shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to section 493.050, RSMo, to publish legal notices in any county where the [land] mine plan area is located. Notice in the newspaper shall be posted once a week for four consecutive weeks beginning no more than ten (10) days after the application is deemed complete in writing by the director via certified mail upon receipt by the applicant. The applicant shall advertise a public notice in accordance with this subsection each time the applicant files a permit application for a new mine, files a request for expansion to an existing mine, when making revisions to the original operation and reclamation plan and when transferring the permit to a new operator, as defined in sections (5)--(7) of this rule. Public notices shall not be required for renewing existing permits or to permit additional acreage within a currently approved long-term operation and reclamation plan, as defined in paragraph (2)(D)6, of this rule. The notice must contain the following:

1. A statement of intent to conduct surface mining specifying the mineral and estimated period of operation;
2. The name and address of the operator;
3. A legal description of affected land consisting of county, section, township and range;
4. The number of acres involved;
5. A statement informing the public that [comments will be accepted by the director of the Land Reclamation Commission for fifteen (15) days following the publication of the public notice] written comments or a request for a hearing and/or an informal public meeting may be made by any person with a direct, personal interest in one or more of the factors that the Missouri Land Reclamation Commission may consider in issuing a permit as required by The Land Reclamation Act, sections 444.760 to 444.790, RSMo, or whose health safety or livelihood will be unduly impaired by the issuance of a permit regarding items such as permitting and reclamation requirements, erosion and siltation control, excavations posing a threat to public safety, or protection of public road rights-of-way. If a hearing is held the Commission has the ability to consider if the applicant has demonstrated a pattern of noncompliance with other environmental protection laws and regulations administered by the Missouri Department of Natural Resources. Written comments shall be sent to the Director of Staff, Land Reclamation Program, Department of Natural Resources, at the program's latest mailing address. All comments and requests for hearings and/or public meetings must be submitted in writing to the Director's office within fifteen (15) days of the late date of publication of the notice. [and
6. The address of the director of the Land Reclamation Commission.]

(I) At the time the application is deemed complete by the director, the applicant shall also mail letters containing a notice of intent to operate a surface mine.

1. The applicant shall send the letters containing a notice of intent to operate a surface mine by certified mail to:

- A. the governing body of the counties or cities in which the proposed area is located, and
- B. the last know addresses of all record landowners of contiguous real property or real property located adjacent to the property line of the property where the proposed mine plan area is located.

**2. The content of the notice sent under this subsection shall be the same as the public notice requirements under subsection (H) of this rule.**

**(J) The applicant shall submit proof that:**

- 1. all certified letters required by this rule have been sent to all applicable parties, as listed above. Receipts showing that all parties have been properly served shall be submitted to the program to verify delivery, and**
- 2. the newspaper ads have been run properly by submitting copies of the affidavits of publication that states the newspaper has complied with 493.050 RSMo.**
- 3. Such proof must be provided by the applicant prior to the Director making a recommendation for approval or denial of the permit.**

(3) As required by section 444.772, RSMo, any mining permit covering affected land that has not been totally reclaimed and released from liability prior to permit expiration must be renewed annually.

(A) The operator shall submit a permit renewal form furnished by the director for an additional permit year and pay an annual fee equal to an application fee calculated pursuant to subsection (F) of this rule, but in no case shall the annual renewal fee for any operator be more than two thousand five hundred dollars (\$2,500.00).

(B) For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand (5,000) tons, the operator shall submit an annual permit renewal form furnished by the director for an additional permit year and pay an annual fee of three hundred dollars (\$300.00).

(C) Upon receipt of the completed permit renewal form and annual fee from the operator, the director shall approve the renewal. With approval of the director and operator, the permit renewal may be extended for a portion of an additional year with a corresponding prorating of the renewal fee.

(4) If an operation will not expand beyond its originally permitted area during the next permit year and the method of operation and reclamation has not changed, a request for renewal, rather than a complete new application, shall be filed on a form approved by the commission.

(5) When the operator desires to add additional acreage to his/her permit or to substantially revise the methods of operation or reclamation reflected in the original application, an amended application shall be filed. The application shall comply with all the items as prescribed in section (2) of this rule.

(6) When one (1) operator succeeds another operator, the second operator must file a complete application which complies with all the items prescribed in section (2) of this rule.

(7) If at any time during the permit term an operator wishes to revise the methods described in an approved operation and reclamation plan, the operator may file a revision to the plan. A revision must include:

(A) A complete description of the revision stating, at a minimum, how the revision changes any of the activities described in the original operation and reclamation plan;

(B) Proof that a public notice has been published, as specified in subsection (2)(H) of this rule; and

(C) A revised map required under paragraph (2)(E)2. of this rule to eliminate inaccuracies in the original map.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992.*

*Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth bonding requirements and bond release requirements pursuant to sections 444.772 and 444.778, RSMo.*

**10 CSR 40-10.030 Bonding**

(1) Bond Requirements. All permit applications must include a bond for the appropriate amount payable to the state of Missouri, which remains in effect until mined acreages have been reclaimed, approved and released by the commission or director, or until replaced with a bond of equal amount.

(A) Operations mining more than five thousand (5000) tons per year of gravel or any quantity of either limestone, barite, traprock, granite, tar sand, clay, sandstone, oil shale, sand, shale and all others defined in section 444.765.4., RSMo must file an eight thousand-dollar (\$8000) bond with the commission. The eight thousand-dollar (\$8000) bond covers up to eight (8) acres of permitted area. Each additional acre permitted over eight (8) acres shall be bonded at five hundred dollars (\$500) per acre. Multiple sites totaling eight (8) acres or less may be covered by a single eight thousand-dollar (\$8000) bond if they are part of a single permit.

(B) Operators who mine less than five thousand (5000) tons of gravel yearly from all sites covered by a single permit shall file a bond with the commission at the rate of five hundred dollars (\$500) per acre for each permitted acre.

(C) In-Stream Sand and Gravel Operations.

1. Initially, an in-stream sand and gravel operator will not be required to submit bond due to the lack of reclamation responsibility.

2. If it is determined, upon inspection and subsequent review and analysis by the staff director, that a reclamation responsibility exists, the permittee will be required to obtain an amended permit on the area of reclamation responsibility, and post the appropriate bond, as described in subsection (1)(A) and (B) of this rule. A reclamation responsibility is defined as a mining activity causing accelerated bank erosion, headcutting upstream or in adjacent streams, excessive sedimentation downstream, impeded stream flow or other circumstances requiring corrective action, but only where there is clear evidence that the mining or reclamation activity within the permit area is the primary cause of this reclamation responsibility.

3. Bond releases shall be handled in accordance with sections (4)--(7) of this rule. The bond would be released once the problem that caused the reclamation responsibility is reclaimed or corrected. Only those problems within a permit area or those operations within a permit area that are determined to be the primary cause of problems within and outside the permit area need to be reclaimed or corrected. The permittee shall not be required to conduct reclamation operations

outside the permit area. Still, work that could be accomplished within the permit area to alleviate those problems that developed outside the permit area would be required before bond release.

(2) Types of Bonds. The director may accept surety bonds and collateral bonds secured by certificates of deposit (CDs).

(A) Surety bonds shall be signed by the operator as principal and the surety bonds must be issued by a good and sufficient corporate surety licensed to do business in Missouri. Persons obligating the surety must be certified by power of attorney.

1. Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed without a bond coverage in violation of this rule and section 444.778, RSMo.

2. The commission may suspend the permit if the operator fails to make substitution of surety within sixty (60) days after receiving notice from the commission, until the substitution is made.

3. The commission also may issue a notice of violation if no substitution is made in sixty (60) days and the permittee continues to operate. The notice of violation shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the director and his/her staff may conduct inspections to ensure continued compliance with other permit requirements, the regulations and the law. If a notice of violation is not abated in accordance with the schedule, the director may pursue forfeiture of the operator's bond.

(B) Collateral bonds secured by CDs shall be subject to the following conditions:

1. The bonds shall be submitted on a form provided by the commission as provided by section 444.778.1., RSMo. A CD must be assigned to the state of Missouri;

2. Interest on a CD shall be paid to the permittee;

3. No single CD shall exceed the sum of one hundred thousand dollars (\$100,000), nor shall any permittee submit CD aggregating more than one hundred thousand dollars (\$100,000) from a single bank or financial institution. The issuing bank or financial institution must be insured by the Federal Deposit Insurance Corporation;

4. The CD shall be kept in the custody of Missouri until the bond is released by the commission **or director**; and

5. The permittee shall give prompt notice to the commission of any insolvency or bankruptcy of the issuer of the certificate.

(C) Personal bonds secured by letters of credit shall be subject to the following conditions:

1. The bond and the letters of credit shall be submitted on forms provided by the commission;

2. Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date;

3. The beneficiary of the letter of credit shall be the state of Missouri;

4. The letter of credit shall be issued by a bank or trust company located in the United States. If the issuing bank or trust company is located in another state, a bank or trust company located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

5. The letter of credit shall be governed by Missouri law. The Uniform Customs and Practice for Documentary Credits, fixed by the International Chamber of Commerce, shall not apply;

6. The letter of credit shall provide that the director may draw upon the credit by making a demand for payment, accompanied by his/her statement that the commission has declared the permittee's bond forfeited;



7. The issuer of a letter of credit or confirmation shall warrant that the issuance will not constitute a violation of any statute or regulation which limits the amount of loans or other credits which can be extended to any single borrower or customer or which limits the aggregate amount of liabilities which the issuer may incur at any one (1) time from issuance of letters of credit and acceptances;

8. The bank issuing the letter(s) of credit for bonding purposes shall give prompt notice to the commission and the permittee of any insolvency or bankruptcy of the bank; and

9. The bond shall be forfeitable upon revocation of the underlying permit.

(D) The replacement of surety and performance bonds shall be subject to the following:

1. Permit holders may replace existing bonds with replacement bonds at any time; and

2. Existing performance bonds will not be released until the permittee has submitted and the director has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this section shall not constitute a release of liability under section 444.775, RSMo.

(3) If, after a surety has provided ninety (90)-day notice of cancellation, the bond shall be considered canceled on any unaffected acreage, except that the total bonding may not be reduced to less than the eight thousand-dollar (\$8000) minimum.

(4) In addition to these bonding requirements, for each acre or portion of an acre permitted on or after August 28, 1990, where topsoil has been removed, either by discarding or selling, an additional bond at four thousand five hundred dollars (\$4500) per acre shall be filed with the Land Reclamation Commission, unless the area does not require replacement of topsoil for revegetation. If more than twelve inches (12") of topsoil exists on the site or if the commission approves a soil substitution plan, the excess may be sold without posting the additional bond.

(5) An operator may file with the commission or director a bond release request for permitted bonded acres which are not disturbed at any time. If approved by the commission, the bond will be reduced at the rate at which it was posted, following a field inspection of the area to verify that no disturbance has occurred.

(6) When an operator succeeds another at an operation, the commission or director may release the first operator after the successor operator obtains a permit and posts the bonds required by law and assumes, in writing, all outstanding reclamation liability and requirements at the site(s) transferred to the successor operator. All areas disturbed by the first operator that have not been transferred to the successor operator shall remain the liability of the first operator.

(7) To file a request for bond release on an operation, an operator must apply, in writing, to the commission for release of the bond or portion of the bond. This application shall be on a form provided by the commission and shall be accompanied by a map showing the area requested for release.

**The operator shall also send notice to the owner(s) of the land upon which the application for release has been filed, unless the operator is the owner of the land that is under permit. Said notice shall contain a copy of the release application and a statement that the landowner(s) may submit a request for a formal hearing to the land reclamation commission if (s)he believes that the land affected by surface mining does not meet the performance standards listed in 10 CSR 40-10.050. The notice shall also inform the landowner(s) that (s)he will have thirty (30) days from the date that the land reclamation program receives the operator's application for release to make the request for a formal hearing. The application for release and the notification letter to the landowner(s) shall be mailed out simultaneously in order to provide the landowner with as much notice time as possible.**

(8) If, after being inspected, an area is found by the commission or director to qualify for a bond release, the bond will be reduced proportionately, but not below the eight thousand-dollar (\$8000) minimum required. An area shall qualify for bond release when the operator has fulfilled all reclamation obligations specified in the approved permit, Land Reclamation Act, the rules in this chapter and all other applicable laws.

(9) Whenever an increase in acreage permitted requires an increase in bond, additional bond and bond form(s) reflecting the increase shall be submitted as required by this rule.

(10) The bond shall be forfeitable upon permit revocation or upon the operator's failure to renew the permit on affected acres not reclaimed or for any violation of these rules. In the event the bond is forfeited, the commission may pursue all legal remedies to obtain the bond and to complete reclamation.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements for review of the application, the approval and denial process and hearing requirements pursuant to section 444.773, RSMo.*

**10 CSR 40-10.040 Permit Review Process**

- (1) **If the director does not respond to a permit application within forty-five (45) days of receipt, the application shall be deemed complete.**
- (2) **[Within fifteen (15) days of receipt of a complete application, but not before any required public notice period has expired, t] The director [promptly shall review the application and] shall make a determination on an application within four (4) weeks after the public comment period provided in 10 CSR 40-10.020(2) expires.** The recommendation will be to either issue or deny.
- (A) The director shall make a recommendation on a permit application based on the following:
1. The application's compliance with section 444.772, RSMo;
  2. The application's compliance with 10 CSR 40-10.020;
  3. Consideration of any written comments received during the **[fifteen (15)-day]** public notice period from persons who have a direct personal interest in one (1) or more of the factors the commission is required to consider in issuing a permit; **and;**
  4. Whether the operator has had a permit revoked, a bond forfeited and has not caused the revocation or forfeiture to be corrected to the satisfaction of the commission [; and
  5. If a petition is filed and a hearing is held under subsection (1)(C), the commission shall make the decision on the permit application].
- (B) If the director recommends a denial, the applicant may request a hearing, as provided for in 10 CSR 40-10.080(1)(A).
- (C) If the director recommends approval of the application, the permit shall be issued without a hearing, unless a petition is received as provided for in 10 CSR 40-10.080 [(1)] **(3)**(B).
- (2) The director may approve a variance to a permit application or permit amendment when the operation, reclamation or conservation plan deviates from the requirements of sections 444.760--444.790, RSMo and these rules if it can be demonstrated by the operator that--
- (A) Conditions present at the mine location warrant the exception;
  - (B) The protection of the health, safety and livelihood of the public is not reduced;

(C) There is no additional effect to the landowner's or adjacent landowner's property than the effects under a normal permit;

(D) The protection afforded by sections 444.760--444.790, RSMo is not reduced;

(E) The procedure to be used in the review of a request for a variance shall be as follows:

1. The operator shall identify on a map the location of the area(s) that the variance request applies. Such map shall comply with the requirements of 10 CSR 40-10.020(2)(E); and

2. The operator shall list the number of acres involved in the variance request area, the dates that work is to commence and is to be completed, and the nature of the variance request; and

(F) If the director recommends a denial of the variance, the applicant may request a hearing, as provided for in 10 CSR 40-10.080(1)(A).

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements that a surface mine operator must meet to protect the environment and restore the surface-mined land by setting standards for post-mining land use, backfilling and grading, topsoiling requirements, sediment and water management control, protection of adjacent properties, temporary site stabilization, and time extension criteria pursuant to section 444.760--444.790, RSMo.*

**10 CSR 40-10.050 Performance Requirements**

(1) Copies of all current Land Reclamation Program permits must be available for inspection at the mine office that is listed on the permit application.

(2) Lateral Support Requirements.

(A) The distance from a public road, street or highway right-of-way to the beginning of excavation shall be--

1. Twenty-five feet (25') plus one and one-half (1 1/2) times the depth of unconsolidated material; and

2. The minimum allowable distance is fifty feet (50'), unless a variance is granted by the commission. The variance shall be according to 10 CSR 40-10.040(2) and shall be approved by the authority having jurisdiction over the road.

(B) For unconsolidated materials left in place, a slope of no more than forty degrees (40°) may start near the right-of-way line and proceed to the excavation which is the point where the slope exceeds forty degrees (40°). In either case, the excavation shall be no closer to the right-of-way than twenty-five feet (25'), plus one and one-half (1 1/2) times the depth of unconsolidated material or fifty feet (50'), whichever is greater, unless a variance is granted according to paragraph (2)(A)2.

(3) Safety Barrier Requirements.

(A) An adequate safety barrier must be placed at the perimeter of the excavation if the excavation is--

1. At or within fifty feet (50') of the right-of-way of any public road and no other adequate barriers exist; or

2. Fifty feet (50') or closer to any property line and is necessary to mitigate serious and obvious threats to public safety.

(B) The barrier shall be a minimum of three feet (3') high.

(4) Erosion and Siltation Control Requirements.

(A) The commission may require erosion or sedimentation control if damaging erosion or siltation occurs or is likely to occur from land affected by surface mining onto adjacent lands.

(B) Erosion and siltation are considered damaging if it causes the approved post-mining land use not to be met or excess silt is deposited on or outside the affected area.

1. Erosion control includes, but is not limited to, diverting runoff away from the permitted area, straw dikes, riprap, check dams, mulch, vegetative cover, chemical treatment and limiting livestock grazing.

2. Sedimentation control includes, but is not limited to, vegetative sediment filters, sediment ponds, silt fences and keeping the disturbed, but reclaimed, area to a minimum by timely reclamation.

3. Erosion control structures shall be constructed to United States Department of Agriculture [Soil Conservation Service (SCS)] **Natural Resources Conservation Service (NRCS)** standards.

4. Sedimentation ponds shall be built to [Missouri SCS Ponds 378 standards] **the requirements of the publication Natural Resources Conservation Service Conservation Practice Standard, POND (No.) CODE 378 (NRCS MOFOTG, December 1998)**, unless subsection (9)(C) or (D) regarding Missouri Dam Safety or Mine Safety and Health Administration (MSHA) apply.

5. Sedimentation ponds shall be designed and built to control damaging runoff.

(5) Grading Requirements.

(A) The affected areas must be graded to a free draining topography traversable by farm machinery and suitable for the intended land use.

(B) Exceptions to the Grading Requirements of Subsection (5)(A).

1. Slopes need not be reduced to less than the original slope of the areas prior to mining by the permittee.

2. Areas that will be under water permanently.

3. Areas that will be reclaimed for wildlife purposes where up to twenty-five percent (25%) of the acreage of overburden generated by surface mining during each permit year need not be graded to a rolling topography, but shall be graded to a minimum width of thirty feet (30') or one-half (1/2) the diameter of the base of the pile, whichever is less.

4. Boxcut spoil that cannot be reclaimed to wildlife purposes shall be graded to a slope no steeper than twenty-five degrees (25 ) from horizontal.

5. Slopes of dams, berms, dikes, ditches or terraces.

6. Areas in the floodplain of a river or stream subject to flooding and to the extent that grading would be unsafe or ineffective as outlined in section 444.774.1(11), RSMo.

7. For barite pits, section 444.774.1(2), RSMo, requires the sidewalls of the excavation to be graded to a point where it blends with the surrounding topography. In no case shall the contour be such that erosion and siltation are increased.

8. Highwalls consisting of consolidated materials may remain after reclamation if overburden material removed during mining is not available for use as backfill or if the backfilling of a highwall is impracticable.

**9. Sites that are temporarily inactive as a result of a finding by the director as per section (10) of this rule are exempt provided that appropriate site stabilization measures are substituted for the grading requirement. Appropriate site stabilization measures shall be specified, if applicable, in the permit application and may include, but not be limited to:**

**A. seeding with approved temporary and permanent species of grasses and legumes,**

**B. mulching, installing and maintaining silt fences,**

**C. otherwise preventing erosion on areas affected by surface mining activities.**

(C) Covering Acid-Forming Materials.

1. Acid-forming materials or other materials requiring special handling uncovered during mining shall be covered with two feet (2') of nontoxic-, nonacid-forming material.

2. Acid-forming materials shall include the following:

A. Materials having an acid-base deficiency of more than five (5) tons calcium carbonate equivalent per one thousand (1000) tons of material;

B. Materials having a pyritic sulfur content of more than two percent (2%) per one thousand (1000) tons of material;

C. Materials having an electrical conductivity of more than four millimhos/centimeter (4.0) (mmhos/cm);

D. Materials having a pH of less than four and one-half (4.5);

E. Oil, scum or other hydrocarbon materials in sufficient amounts collected on or in impoundments which will affect wildlife adversely; and

F. Waste materials from the processing of tar sands.

(D) When surface mining tar sands, all spent sands and refuse shall be collected and disposed of as the commission prescribes as conditions of the permit.

(6) Topsoil Handling Requirements.

(A) Soil Removal.

1. A twelve-inch (12") layer that includes the A horizon (the topsoil) and the unconsolidated material immediately below the topsoil, or all of unconsolidated material if the total available is less than twelve inches (12"), shall be removed and replaced as the surface soil layer.

2. If twelve inches (12") of the A horizon and the unconsolidated material immediately below the topsoil does not exist, the SCS county soil survey shall be used to verify available material. If the operator disagrees with the SCS survey or if the SCS soil survey is not available, it shall become his/her burden to demonstrate that less than twelve inches (12") of material existed prior to mining.

3. All of the required soil material shall be removed before drilling, blasting, mining or other surface disturbance can take place.

4. All topsoil shall be removed ten feet (10') ahead of the mineral or overburden excavations unless use of substitute materials is approved in the reclamation plan.

(B) Whenever topsoil is not respread immediately, the stockpiled topsoil or substitute material shall be placed in a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion or contaminants. Topsoil shall be protected from erosion, whether in stockpiles or after replacement on graded spoil, by establishment of a temporary or permanent vegetative cover or by mulching.

(C) Soil Redistribution.

1. Topsoil redistribution. Topsoil shall be redistributed in a manner that-- A. Achieves an approximate uniform thickness;

B. Prevents excess compaction of the topsoil; and

C. Protects the slope from erosion, on all slopes five-to-one (5:1) ratio or greater or where erosion occurs, by the operator applying mulch or using other measures approved by the director.

2. Nutrients and soil amendments shall be applied to the surface soil layer in a manner sufficient to achieve a vegetative cover as required by section 444.774.2., RSMo and these rules.

**3. No topsoil or other approved material is required to be placed on areas reclaimed for wildlife purposes or industrial areas as specified in the reclamation plan.**

(D) Overburden or other approved materials may be used as a topsoil substitute material provided the resulting soil medium is equal to or more suitable for vegetation and if all the following requirements are met:

1. The operator demonstrates in the reclamation plan that the selected overburden materials or an overburden-topsoil mixture is equal to or more suitable for restoring land capability and productivity by results of chemical and physical analysis. These analyses shall include determinations of pH, percent organic material, phosphorus, potassium, texture class and water-holding capacity;
2. The chemical and physical analyses are performed by a qualified laboratory; and
3. The alternative material is removed and replaced in accordance with this section.

(E) Sale or Destruction of Topsoil.

1. The approved reclamation plan also may include a provision for the sale or disposal of excess topsoil, provided sufficient topsoil is stockpiled as necessary to carry out the reclamation plan.

2. If topsoil is removed and either sold or made unavailable for reclamation, a four thousand five hundred-dollar (\$4500)-per-acre bond for each acre to be revegetated shall be posted with the Land Reclamation Commission for each acre on which this occurs, unless a substitute material is stockpiled. This bonding requirement shall not apply to areas where topsoil does not exist prior to mining.

(7) Revegetation and Post-Mining Land Uses.

(A) Reclaimed areas shall be able to support or be utilized, or both, for one (1) or more of the following uses:

1. Wildlife habitat--Areas that will be utilized as forest, wildlife shelter, wildlife food sources and that can be protected from livestock;
2. Agricultural--Areas that will be utilized as pasture, cropland, horticultural crops and support facilities;
3. Development--Areas that will be utilized as home sites, industrial development and recreational sites; and
4. Water impoundments--Areas that provide water impoundments for wildlife habitat, agricultural uses or development uses.

(B) Revegetation.

1. Where required, the operator shall establish a vegetative cover appropriate for the approved land use and in conjunction with 10 CSR 40-10.020(2)(D)3. by methods based on sound agronomic and forestry practices.

2. The vegetation on all affected areas, as appropriate, shall be sufficient to control erosion.

3. All soil amendments made for the purpose of establishing or improving vegetative cover on an affected area shall be based upon soil test results from a qualified soils lab.

(8) Cleanup Requirements. All debris and materials generated by the mining operations not allowed or shown on the reclamation plan must be removed before reclamation is considered complete.

(9) Permanent Final Pit Impoundments.

(A) Section 444.774.1(7), RSMo allows for permanent impoundments in the final cut in a permit area. The impoundment shall--

1. Not interfere with other mining operations.
2. Not damage adjoining property.
3. Comply with section 444.774.1(8), RSMo, which requires--



A. If the impoundment will cover the exposed face of a mineral seam where toxic materials are present, then it must be constructed to prevent a constant inflow from a stream and the discharge must not cause fish or wildlife kills; and

B. If the impoundment will cover tar sands, the tar sands must be capped with two feet (2') of earth; and no layer of hydrocarbon will be allowed to collect on the surface that will affect fish or wildlife adversely.

(B) The impoundment shall be designed and constructed to SCS Ponds 378 standards for Missouri.

(C) If the height of the dam is thirty-five feet (35') or more, as measured from the natural bed of the stream or lowest point on the toe of the dam (whichever is lower) up to the crest elevation, then the operator must have the designs approved by the Dam and Reservoir Safety Program per 10 CSR 22-3.020 prior to construction of the impoundment.

(D) If the structure can impound water or sediment to a height of five feet (5') or more above the upstream toe of the structure and can have a storage volume of twenty (20) acre-feet or more, or can impound water or sediment to an elevation of twenty feet (20') or more above the upstream toe, then the operator is advised that the federal requirements of 30 CFR 77.216 may apply.

(E) The effluent shall meet National Pollutant Discharge Elimination System (NPDES) standards where NPDES permits have been issued before the bond is released.

(10) Timing of Reclamation. Reclamation shall commence as soon as practicable after the **[start of mining. On all areas or portions of areas where surface mining has been completed.] completion of surface mining of viable mineral reserves in any portion of the permit area in accordance with the plan of reclamation required by subsection 9 of 444.772, these rules and the conditions of the permit.**

(A) Grading and topsoil replacement shall be completed within twelve (12) months after **[the expiration or renewal of the permit under which the surface mine disturbance occurred] mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence, in writing, to the director that viable mineral reserves are present.**

(B) Seeding and planting shall be completed within twenty-four (24) months **[after the expiration of the permit or initial permit renewal,] after mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence, in writing, to the director that viable mineral reserves are present,** with survival of vegetation by the second growing season.

(C) All areas within the permit shall be subject to this timetable unless it can be shown by the operator that the area is needed as a part of the active operations.

**(D) The director or commission shall keep information confidential if the person submitting it requests, in writing at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to provide information.**

**(E) The director's determination shall be documented in writing to the file.**

(11) Signs. A sign(s) identifying the mine area shall be displayed at the primary point of access to the permit area. It shall show the name of the permittee. The operator shall exhibit due diligence in maintaining the sign(s) until after the release of all performance bonds.

(12) Substitution of Previously Mined Land for Reclamation.

(A) The operator may reclaim an area of previously mined land as a substitute for the areas actually disturbed by the permitted mining. Substitute areas need not be contiguous to the original permit area.

(B) The substitute area must be shown to have an equivalent or greater reclamation benefit than the original mine site.

(C) The landowners of both the substitute areas and the original mine site must have given approval for the substitution.

(D) The operator shall submit two (2) copies of an application and reclamation plan on a form provided by the commission and maps equivalent to 10 CSR 40-10.020(2)(E).

(E) The operator must receive approval of the request from the commission or director before the reclamation is initiated on the substitute site.

(F) The operator shall be released of all responsibility for reclamation on the area previously permitted.

(13) Flood Plain.

(A) Mining conducted in flood plains of streams and rivers subject to periodic flooding may be exempt from grading requirements if it can be demonstrated to the commission that grading would be unsafe to pursue or ineffective in achieving proper reclamation.

(B) Areas that are in a flood plain, as defined in 10 CSR 40-10.100(8), and where reclamation operations are unsafe to pursue or ineffective in achieving reclamation as defined in subsection (13)(C), will be exempted automatically without demonstration to the commission if it can be demonstrated to the director.

(C) Reclamation operations shall be considered unsafe to pursue or ineffective in achieving reclamation if the land surface is affected severely in that inundation causes surface changes that makes reclamation ineffective and nonpermanent.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements for the commission, director or authorized agent to enter upon surface mined lands for the purposes of conducting inspections to assure compliance with the state laws and rules pursuant to section 444.777, RSMo.*

**10 CSR 40-10.060 Inspection Authority and Right of Entry**

(1) Access.

(A) The commission, director or authorized agent, upon presentation of appropriate credentials--

1. Shall have the right-of-entry to any lands being or have been surface mined;  
2. May have access, at reasonable time and without delay, to inspect any records applicable to surface mining and reclamation operations pursuant to sections 444.760--444 .789 .790, RSMo; and

3. May inspect, at reasonable time and without delay, the methods of operation and reclamation.

(2) If access is refused or an inspection obstructed or hampered, a search warrant may be obtained.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written*

*statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements for enforcement procedures pursuant to sections 444.778, 444.782, 444.786, 444.787, 444.788 and 444.789, RSMo. and removes the procedures for an informal assessment conference and places those procedures in a more applicable part of the rules.*

**10 CSR 40-10.070 Enforcement**

(1) Operations Without a Permit.

(A) If surface mining activities are being conducted without a permit or in violation of any revocation order and a variance has not been issued, enforcement action shall be taken.

1. Prior to the filing of any suit, a notice of violation shall be issued to the operator by the director or an authorized representative of the director. This notice shall be in writing, signed by the person writing the violation and setting forth:

- A. The nature of the alleged violation;
- B. The law, regulation or permit requirement violated;
- C. The location of the affected area to which it applies;
- D. The remedial action(s) required; and
- E. A reasonable time for abatement.

2. The director may vacate the notice of violation or modify the abatement requirements and the time frames if sufficient justification is presented by the operator.

3. The director shall terminate a notice of violation if all abatement measures have been accomplished. The notice of violation may be subject to an administrative penalty so defined in section (7).

4. The violation shall be served upon the operator as described in section (4).

5. If the operator fails to respond to the notice of violation as per the abatement method and time as specified in the notice, the director shall present the matter to the commission. The commission shall request the attorney general to file suit in the name of the state of Missouri in either the county where the violation has occurred or in Cole County. The suit shall be filed for injunctive relief and civil penalty of not less than fifty dollars (\$50) nor to exceed one thousand dollars (\$1000) per day for each day the violation continues and for forfeiture of bond. Civil penalties may be assessed by the court of jurisdiction following the determination of a violation.

6. The operator is not entitled to an informal conference or a hearing before the commission based upon the fact of a notice of violation issued under this provision. The operator's right to appeal shall be before the court of jurisdiction.

7. The operator may enter into a settlement agreement with the commission, if adopted and approved by the court of jurisdiction. A settlement agreement shall not be prepared until a petition for injunctive relief has been filed.

(2) Operations With a Permit.

(A) Conference, Conciliation and Persuasion (CC&P). If, during the course of inspection, it is determined that a surface mining operation is being conducted contrary to or in violation of any statute or regulation promulgated by the commission, a condition of the permit or any approved variance or condition of the bond, the director, by conference, conciliation or persuasion, may endeavor to eliminate the violation.

(B) Notice of Violation. If attempts to eliminate a violation through, CC&P are not successful, the director or an authorized representative of the director shall issue a violation to the operator. The notice of violation may be issued by an authorized representative of the commission.

1. A notice of violation issued under this section shall be in writing, signed by the person writing the violation and setting forth--

- A. The nature of the alleged violation;
- B. The law, regulation or permit requirement violated;
- C. The location on the permit to which it applies;
- D. The remedial action(s) required; and
- E. A reasonable time for abatement.

2. The director may vacate the notice of violation or modify the abatement requirements and the time frames if sufficient justification is presented by the operator.

3. If the time frame for abatement of a violation is not met, the director shall file a formal complaint with the commission.

4. The director shall terminate a notice of violation if all abatement measures have been accomplished. The notice of violation may be subject to administrative penalties as defined in section (7).

(3) Formal Complaint.

(A) The director shall issue a formal complaint to the commission if the--

- 1. Abatement measures have not been met within the prescribed time frame; or
- 2. Administrative penalties assessed by the commission have not been paid within ninety (90) days.

(B) The formal complaint shall be in writing, signed by the director and include:

- 1. The nature of the alleged violation;
- 2. The law or regulation violated;
- 3. Remedial action required;
- 4. The statement that the operator has a right to a hearing; and
- 5. The proposed penalty assessment on the original violation.

(C) The operator may request a hearing by the commission within fifteen (15) days of receipt of the complaint by the operator.

(4) Service of Notice of Violation, Formal Complaint or Commission Orders.

(A) A notice of violation, formal complaint or commission order shall be served on the person to whom it is directed or a designated agent by certified mail or hand delivered at the mine site.

(B) If the person to receive the certified materials refuses to accept delivery or to collect the mail, the requirements of this rule shall be deemed to have been completed.

(5) Permit Revocation or Suspension.

(A) A permit may be subject to suspension or revocation if any of the following conditions apply:

1. The permittee has failed to commence corrective measures outlined in a notice of violation within ninety (90) days;
2. The permittee has become insolvent, failed in business, been adjudicated bankrupt, filed a petition in bankruptcy or for a receiver, or had a petition filed against him/her, had a receiver appointed by any court or creditor of the permittee, has attached or executed a judgment against the permittee's equipment, materials or facilities at the permit area, and the permittee cannot demonstrate or prove an ability to continue to operate in compliance with the regulatory program and permit and plan;
3. The commission shall not issue any permits to any person who has had a permit revoked until the violation that caused the revocation is corrected by the operator to the satisfaction of the commission;
4. The permittee fails to reinstate or replace a bond that has been cancelled by surety as provided by section 444.778, RSMo; or
5. The permittee fails to pay an administrative penalty within ninety (90) days of being assessed by the commission and all administrative and judicial reviews have been exhausted. Judicial review should be requested within thirty (30) days of the commission's final decision.

(B) Procedures.

1. If a hearing is held pursuant to subsection (3)(C) of this rule, the commission shall issue written findings of facts and conclusions of law.
2. If appropriate, the commission shall issue an order suspending or revoking the permit within thirty (30) days after the hearing.

(C) After a hearing is held at the request of the operator who has received a formal complaint or after considering a formal complaint when no hearing has been requested by the operator, the commission may revoke or temporarily suspend the permit. The commission may reinstate a suspended permit after the violation has been abated in a satisfactory manner.

(6) Bond Forfeiture.

(A) The commission shall notify the operator of any noncompliance when responding to a formal complaint. This notice shall give the operator a description in writing, by certified mail, of any corrective measures to be taken as approved by the commission, and if these corrective measures have not been commenced by the operator within ninety (90) days, the commission may request forfeiture of the bond.

(B) If the operator does not abate the violation, the--

1. Land Reclamation Commission will notify the operator of noncompliance in writing by certified mail; and
2. Operator will be provided with an opportunity to request a hearing within thirty (30) days after receiving the notification.

A. If the operator requests a hearing, the commission, based on the information presented at the hearing, may--

- (I) Vacate;
- (II) Modify; or
- (III) Affirm the violation.

B. If the commission affirms the violation or the operator does not request a hearing, the commission may request the attorney general's office to forfeit bond after the permit has been revoked.

C. If the surety desires to and is capable of completing reclamation, the director, under additional terms and conditions as s/he deems necessary or prudent, may enter into an agreement with the surety to complete reclamation as expeditiously as possible on a set schedule of compliance in lieu of collection of the forfeited bond. If the surety fails to complete reclamation according to the schedule of compliance, the director shall collect the forfeited bond or any instruments securing the bond.

(C) An order of bond forfeiture shall authorize the commission to utilize appropriated monies in the Mine Land Reclamation Fund to complete the reclamation.

(7) Penalty Assessment.

(A) The director shall review each notice of violation in accordance with the assessment procedures described in this rule to determine whether an administrative penalty should be assessed, the amount of the penalty and whether each day of continued violation will be deemed a separate violation for purposes of the total penalty assessed and, when appropriate, file with the commission and serve the operator the notice provided by section 444.787, RSMo, within thirty (30) days of the issuance of the notice of violation.

(B) Matrix System for Penalties.

1. The matrix system described in this section shall be used to determine the amount of penalty. A penalty shall not be imposed until the director has sought to eliminate the violation through CC&P as defined in 10 CSR 40-10.100(6) or if the violation is considered a minor violation as defined in 10 CSR 40-10.100(31)(B).

2. A penalty shall be assigned in whole numbers as follows:

A. Potential for harm. The assessment of the potential for harm resulting from a violation should be based on the following:

(I) Risk of exposure. The risk of human or environmental exposure presented by a given violation depends on both the likelihood of exposure and the degree of that potential exposure. Evaluating the risk of exposure may be aided by considering these factors--

(a) Probability of exposure; if the investigation indicates that the probability of exposure is considered high-- three (3) points are assigned, if considered moderate--two (2) points are assigned, if considered low--one (1) point is assigned.

(b) Potential seriousness of the exposure; if the investigation indicates that the probability of exposure is considered high--three (3) points are assigned, if it is considered moderate--two (2) points are assigned, if it is considered low--one (1) point is assigned;

(II) Harm to the regulatory program. Violations may have serious implications and merit substantial penalties where the violation undermines statutory or regulatory purposes or procedures for implementing sections 444.760-- 444.790, RSMo and its corresponding regulations. If the actions of the operator that are the subject of a violation, have or may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing the law or regulations and the program is substantially undermined--three (3) points shall be assigned, if the program is significantly undermined--two (2) points shall be assigned, if there is a small adverse effect--one (1) point shall be assigned; and

(III) Evaluating the potential for harm. The potential for harm should be considered to be major, moderate or minor based upon the average of the points assigned under (7)(B)2.A.(I)(a), (b) and part (7)(B)2.A.(II). If the average of the total points assigned is two and six-tenths (2.6) or greater, the assigned category in the assessment matrix in the potential for harm axis shall be considered major; if the average is from one and six-tenths (1.6) to two and three-tenths (2.3),



the assigned category shall be moderate; if the average is one and three tenths (1.3) or lower, the assigned category shall be minor.

(a) Major. The violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations, or both;

(b) Moderate. The violation poses or may pose a significant risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or, actions, have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations, or both; and

(c) Minor. The violation does not pose a substantial or significant risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or the actions have or may have a small adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations;

B. Extent of deviation from requirement. This relates to the degree to which the violation renders inoperative the law or regulation violated. The violator may be substantially in compliance with the provisions of the law or regulation or it may have totally disregarded the law or regulation. In determining the extent of the deviation, the following categories should be used:

(I) Major. The violator deviates from the law or regulation requirements to the extent that most (or important aspects) of the requirements are not met, resulting in substantial noncompliance;

(II) Moderate. The violator significantly deviates from the requirements of the regulation or statute, but some of the requirements are implemented as intended; and

(III) Minor. The violator does not deviate substantially or significantly from the regulatory or statutory requirements, but most (or all important aspects) of the requirements are met; and

C. Penalty assessment matrix. The factors outlined in subsections (2)(A) and (B) concerning potential for harm and extent of deviation from a requirement will be used in determining the penalty to be assessed. A matrix is formed using potential for harm and extent of deviation from a requirement as axes of the penalty assessment matrix. The matrix has nine (9) cells and the specific cell is chosen after determining whether major, moderate or minor is appropriate for both the potential for harm and the extent of deviation from requirement factors. The matrix to be used is illustrated--

Extent of Deviation From Requirement

| Potential for Harm | Major           | Moderate       | Minor          |
|--------------------|-----------------|----------------|----------------|
| Major              | \$1000 to \$800 | \$799 to \$600 | \$599 to \$400 |
| Moderate           | 799 to \$600    | \$399 to \$200 | \$199 to \$100 |
| Minor              | \$599 to \$400  | \$199 to \$100 | \$0            |

3. Adjustment factors. After the initial assessment is obtained from the matrix, the assessment may be adjusted by taking into account the following factors:

A. Good faith/lack of good faith. The operator can manifest good faith by promptly acting to abate the violation, in which case, the assessment would be adjusted down. The operator can also manifest lack of good faith by not meeting specified time frames for no apparent reason, in which case, the assessment may be adjusted up. No adjustment should be made where the

operator's efforts primarily consist of coming into compliance. The following dollar amounts shall be used to adjust the penalty assessment as determined by the matrix:

(I) For prompt abatement--

- (a) Abatement within 10% of time allowed, deduct \$100;
- (b) Abatement within 11 to 20% of time allowed, deduct \$90;
- (c) Abatement within 21 to 30% of time allowed, deduct \$80;
- (d) Abatement within 31 to 40% of time allowed, deduct \$70;
- (e) Abatement within 41 to 50% of time allowed, deduct \$60;
- (f) Abatement within 51 to 60% of time allowed, deduct \$50;
- (g) Abatement within 61 to 70% of time allowed, deduct \$40;
- (h) Abatement within 71 to 80% of time allowed, deduct \$30;
- (i) Abatement within 81 to 90% of time allowed, deduct \$20;
- (j) Abatement within 91 to 99% of time allowed, deduct \$10;
- (k) Abatement within 100% of time allowed, deduct \$0;

(II) For lack of good faith, there shall be an additional five dollars (\$5) added to the assessment for each day that the abatement goes beyond the date assigned in the notice of violation, for up to thirty (30) days or one hundred fifty dollars (\$150) of added assessment.

B. Degree of willfulness negligence, or both. Adjustments may be made in instances of heightened culpability. In determining whether to adjust the penalty upward, the commission shall consider the operator's control over the violation, foreseeability of the events constituting the violation, precautions taken by the operator, the operator's knowledge of the legal requirement which was violated and whether the operator knew or should have known of the hazards associated with the conduct that caused the violation. The penalty shall be adjusted as follows, considering the operator's degree of willfulness/negligence:

(I) If the events surrounding the violation were within the operator's control, the assessment shall be increased by fifty dollars (\$50);

(II) If the events surrounding the violation were out of the control of the operator, the assessment shall be decreased by fifty dollars (\$50);

(III) If the events surrounding the violation were foreseeable and the operator failed to act, the assessment shall be increased by fifty dollars (\$50);

(IV) If the events surrounding the violation were unforeseeable, the assessment shall be decreased by fifty dollars (\$50);

(V) If the operator was diligent in taking precautions to prevent or avoid the violation, the assessment shall be decreased by fifty dollars (\$50);

(VI) If the operator was not diligent, there shall be no adjustment to the assessment;

(VII) If the operator was negligent in preventing the violation, fifty dollars (\$50) shall be added to the assessment;

(VIII) If the violation was caused by intentional conduct and a threat to health or safety is a result, one hundred dollars (\$100) is added to the assessment;

(IX) If the operator was warned of the legal requirements, twenty dollars (\$20) shall be added to the assessment for each written warning given;

(X) If the operator was aware of the legal requirements, but not advised of them, ten dollars (\$10) shall be added to the assessment;

(XI) If the operator was warned of the hazards posed by the violation and an environmental, health or safety hazard has been created, twenty dollars (\$20) shall be added to the assessment for each warning given;

(XII) If the operator was aware of the environmental, health or safety hazards, but was not warned, ten dollars (\$10) shall be added to the assessment;

C. History of noncompliance. The assessment would be adjusted upwards if the operator has a history of noncompliance. The adjustment would be based on the similarity of the previous violation(s), how recent the previous violation(s) was, the number of previous violation(s) and the operator's response to abating the previous violation(s). The history of all violation(s) that have been finalized in the past twenty-four (24) months shall be considered as follows:

(I) For violation(s) of a similar nature, twenty-five dollars (\$25) each shall be added to the assessment; and

(II) For each day the operator failed to abate the notice(s) of violations(s), five dollars (\$5) shall be added to the assessment for each violation.

D. Ability to pay. A downward adjustment to the assessment could be made if the operator can clearly show that the assessment is beyond its means to pay.

4. Assessment of separate violation for each day. An administrative penalty may be assessed for each day the violation continues. In determining whether to make the assessment, the factors listed in subsection (7)(B) of this rule shall be considered and the extent to which the person to whom the notice or order is issued gained an economic benefit as a result of a failure to comply may be considered.

5. Procedures for assessment of administrative penalties.

A. When the director files a notice as provided in section (4) of this rule, the procedures set forth in sections 444.787 and 444.790, RSMo will be followed.

B. The director shall serve a copy of the proposed assessment and worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued by certified mail within thirty (30) days of the issuance of the notice or order.

(I) If the mail is tendered at the address of that person set forth in the permit as required under 10 CSR 40-10.020 or at any address which the person is in fact located and s/he refuses to accept delivery or to collect the mail, requirements of this paragraph shall be deemed to have been complied with upon the tender.

(II) Failure by the director to serve any proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the person against whom the proposed penalty has been assessed--

(a) Proves actual prejudice as result of the delay; and

(b) Makes timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review as outlined in the rules set forth.

C. Unless a conference has been requested, the director shall review and reassess any penalty, if necessary, to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The director shall serve a copy of any reassessment and of a worksheet showing computation of the reassessment in the manner provided with subsection (7)(C) of this rule. However, in no case shall the penalty be increased where commission or department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty.

**[(C) Procedures for Informal Assessment Conference.**

**1. The director shall arrange for an informal conference to review the proposed assessment or reassessment upon written request of the person to whom the notice or order was issued. If the request is received within fifteen (15) days from either the date of**

issuance of the proposed assessment/reassessment, the informal conference shall be held within sixty (60) days of the receipt of the written request.

2. Failure to hold these conferences within that sixty (60)-day time period shall not be grounds for dismissal.

3. The commission shall assign the director to hold the informal assessment conference. The conference shall not be governed by Chapter 536, RSMo regarding the requirements for formal adjudicatory hearings.

4. The director shall notify the person issued the notice or order, any person who caused, directly or indirectly, the issuance of the notice or order and any interested persons of the time and place of the conference.

5. The director shall consider all relevant information on the violation within thirty (30) days after the conference is held. The director either shall--

A. Issue a proposed settlement agreement that has been prepared and signed by him/herself to the person issued the notice or order; or

B. Affirm, raise, lower or vacate the proposed penalty.

6. The director promptly shall serve the person assessed with the notice of his/her action in the form of a settlement agreement and a cover letter explaining the action or a letter and new worksheet, if required, if the penalty has been vacated, raised or lowered.

7. If the settlement agreement is signed by the person issued the notice or order, the person assessed will be deemed to have waived all rights of further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement, the settlement agreement shall contain a clause to this effect.

8. If the settlement agreement is entered into, the agreement shall be proposed to the commission for approval or disapproval.

9. If approved, the commission shall send the person issued the notice or order a copy of the commission order and request for payment within thirty (30) days.

10. If the settlement agreement is disapproved or if payment is not made within thirty (30) days, the assessments determined by the penalty points shall be proposed to the commission at the next regularly scheduled commission meeting.

11. If the person issued notice or order does not accept a settlement agreement or any other action of the director which is a result of the informal assessment conference, s/he may request a formal review before the commission. The request shall be received by the commission within thirty (30) days of the receipt of the director's decision from the conference.

12. At any formal review proceeding, no evidence as to statements made or evidence produced by any one (1) party at an informal conference or resultant settlement agreement shall be introduced as evidence by another party or to impeach a witness.]

**The procedures for requesting and holding an informal assessment conference are found in 10 CSR 40-10.080(5).**

**[(D)] (C)** Procedures for Appeal to the Commission.

1. Any person or permittee subject to an administrative penalty, after an informal assessment conference, or in lieu of an informal assessment conference, may appeal his/her penalty to the commission for a review.

2. Any appeal to the commission will be handled in accordance with section 444.789, RSMo, and according to Missouri's Administrative Procedure and Review Law, as found in Chapter 536, RSMo.

~~[(E)]~~ **(D)** Judicial Review. Any final order imposing an administrative penalty is subject to judicial review upon filing of a petition pursuant to section 536.100, RSMo, by any person subject to the penalty. Either party may require that the judicial appeal is tried as a trial de novo in the circuit court of the jurisdiction where the violation occurred.

~~[(F)]~~ **(E)** Payment of Administrative Penalties.

1. Any appeal will stay the due date of that administrative penalty until the appeal is resolved.
2. Payment of any administrative penalty shall be paid within sixty (60) days from the date of issuance of the order assessing the penalty.
3. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent (15%) of the penalty plus ten percent (10%) per annum on any amounts owed.
4. Action may be brought in the appropriate circuit court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of it.

~~[(G)]~~ **(F)** Payment of Administrative Penalty. Any administrative penalty assessed under this rule shall be paid to the county treasurer of the county where the violation occurred and credited to the school fund.

~~[(H)]~~ **(G)** Civil Penalty.

1. The state may elect to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court in lieu of assessing an administrative penalty.
2. Assessment of an administrative penalty shall preclude the assessment of--
  - A. A civil penalty for the same violation by the attorney general; and
  - B. The judicial assessment of a civil penalty for the same violation.

~~[(I)]~~ **(H)** The regulations in this rule may also be used in the assessment of civil penalties.

~~[(J)]~~ **(I)** (J) Habitual Violator. A person or operator as defined in 10 CSR 40-10.100(10).

1. The limitation outlined in paragraph (7)(G)2. of this rule shall not apply for a habitual violator of the Land Reclamation Act, land reclamation laws of other states or Missouri or federal laws pertaining to land reclamation.
2. Where a habitual violator, as per the definition in 10 CSR 40-10.100(10), is identified, the commission may pursue both administrative penalties and civil penalties as outlined in this section.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738*

*E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the procedures for public meetings, hearings, and informal assessment conferences pursuant to sections 444.773 and 444.787, RSMo.*

**10 CSR 40-10.080 Public Meetings, Hearings and Informal Conferences**

(1) [Hearings.] **Public Meetings.**

**(A) If the recommendation of the director is for issuance of the permit, and a petition has been filed by an aforementioned person or persons prior to the termination of the public notice timeframe, the director shall, within thirty (30) days after the timeframe for such request has passed, order that a public meeting be held provided that the applicant agrees. If the applicant does not agree to the public meeting then the petition may be referred to the commission for a formal public hearing as directed by subsection (E) of this section if the petitioner makes a written request.**

**(B) If a meeting is ordered by the director and the applicant agrees, it shall be held in a reasonably convenient location for all interested parties. The applicant shall cooperate with the director in making all necessary arrangements for the public meeting.**

**(C) Only those parties who submitted a written request to the Director during the public notice period referred to in (1)(A) of this rule may participate in a public meeting. Anyone may attend a public meeting, however.**

**(D) The applicant shall be responsible for moderating a public meeting.**

**(E) Within thirty (30) days after the close of the public meeting, the director shall recommend to the commission approval or denial of the permit.**

**(F) If the public meeting does not resolve the concerns expressed by the petitioner, then only the petitioner(s) who has requested a public meeting or hearing during the public comment period referred to in (1)(A) of this rule, may, within thirty (30) days after the director renders a recommendation to the commission on the application, make a written request to the land reclamation commission for a formal public hearing.**

**(G) The commission may grant the petitioner a formal public hearing provided the petitioner has standing for such a hearing.**

(2) **Establishing Standing for a Formal Public Hearing.**

**(A) For a formal public hearing to be granted by the land reclamation commission, the petitioner must first establish standing.**

**(B) The petitioner is said to have standing to be granted a formal public hearing if the petitioner provides good faith evidence of how their health, safety, or livelihood will be unduly impaired by the issuance of the permit. The impact to the petitioner's health, safety, and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources.**

**(C) The Director and the applicant have standing and are parties in any formal public hearing whether held at the request of the applicant or at the request of the petitioner.**

**(3) Application Hearings.**

(A) Any operator, whose permit application has been denied, may request a hearing before the Land Reclamation Commission if s/he notifies the director within fifteen (15) days of date of the notice of recommendation of permit denial. [ The hearing will be held within fifteen (15) days of the date of the request.

(B) A hearing concerning permit issuance may be requested by any person whose health, safety or livelihood is affected by the surface mining as defined in 10 CSR 40-10.100(28) and who petitions the director within the initial fifteen (15)-day permit review period. Criteria used for the determination of the scheduling of a hearing should be based upon the finding that the person's health, safety or livelihood is affected by noncompliance with any applicable laws or regulations.]

**(B) The burden of establishing an issue of fact regarding the impact, if any, of the permitted activity on a hearing petitioner's health, safety or livelihood shall be on that petitioner by competent and substantial scientific evidence on the record. Furthermore, the burden of establishing an issue of fact whether past noncompliance of the applicant is cause for denial of the permit application shall be upon a hearing petitioner and/or the director by competent and substantial scientific evidence on the record. Once such issues of fact have been established, the burden of proof for those issues is upon the applicant for the permit.**

**(C) Any public hearing pursuant to this section shall be conducted according to the procedures outlined in subsection (4) of this section, Procedure for Hearings Before the Commission.**

**(D) If the Commission finds, based upon competent and substantial scientific evidence on the record, that a hearing petitioner's health, safety or livelihood will be unduly impaired by impacts from activities that the recommended mining permit authorizes, the commission may deny the permit.**

**(E) If the Commission finds, based upon competent and substantial scientific evidence on the record, that the operator has, during the 5 year period immediately preceding the date of the permit application, demonstrated a pattern of noncompliance at other locations in Missouri that suggests a reasonable likelihood of future acts of noncompliance, the Commission may deny such permit, provided however:**



1. Such past acts of noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a reasonable likelihood of future acts of noncompliance.
  2. Such past acts of noncompliance in Missouri shall not be used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the noncompliance has caused or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor.
- (F) If a hearing petitioner or the Director demonstrates either present acts of noncompliance or a reasonable likelihood that the applicant or the operations of associated persons or corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the noncompliance requirement in this subsection, but such basis must be developed by multiple noncompliances of any environmental law administered by the Missouri Department of Natural Resources at any single facility in Missouri where such noncompliances resulted in harm to the environment or impaired the health, safety, or livelihood of persons outside the facility.
- (G) For any permit applicant that has not been in business in Missouri for 5 years immediately preceding the date of application, the Commission may review the record of noncompliance with environmental laws in any state where the applicant has conducted business during the past 5 years.
- (H) Any decision of the Commission made pursuant to this rule is subject to judicial review as provided in Chapter 536, RSMo. No judicial review shall be made available until all administrative remedies are exhausted.

#### (4)Other Hearings

- (A) [(C)]If an owner of land that has been affected files a petition in opposition to the release of an operator's bond within thirty (30) days of the receipt date of the application for bond release, a hearing [will] may be held to determine if the site meets bond release standards. The landowner shall make a demonstration that a performance standard(s) ha(s)ve not been met at the site in question in order for the commission to determine if a hearing will be held.
- (B) If the director recommends denial of an application for bond release, the operator may request a hearing within thirty (30) days of the receipt of the denial.
- (C) Within fifteen (15) days of being issued a formal complaint, the operator may request a hearing before the Land Reclamation Commission at its regular meeting.
- (D) For any decision of the commission made pursuant to a hearing held under this section, judicial review is provided in Chapter 536, RSMo. No judicial review shall be available, however, until and unless all administrative remedies are exhausted. The hearing shall also adhere to the requirements of section 444.789, RSMo and corresponding regulations.
- (E) For all hearings, the Land Reclamation Commission shall issue these orders as shall be appropriate and shall give notice to the operator and, if applicable, to the person requesting the hearing.

**(F)** All final orders of the commission shall be subject to judicial review. Judicial review shall not become available until all administrative remedies are exhausted.

**[(2)] (5)** Procedure for Hearings Before the Commission.

(A) Any hearing shall be of record and shall be a contested case.

(B) Those involved in the hearing may make oral argument, introduce testimony and evidence and cross-examine witnesses.

(C) The hearing shall be before--

1. The commission as a body;
2. One (1) designated commission member; or
3. A member of the Missouri Bar or a hearing officer.

(D) The full commission shall make the final decision as to the results of the hearing and shall issue written findings of fact and conclusions of law.

(E) Any member of the commission may issue, in the name of the commission, notice of hearing and subpoenas. The rules of discovery that apply to any civil case shall apply to hearings held by the commission.

(F) The commission immediately shall notify the operator of its decision by certified mail.

**[(3)] (6)** Informal Conferences.

(A) Within fifteen (15) days of receipt of a notice of violation, an operator may request an informal conference with the director at a location of the director's discretion, unless the operator has been cited for failure to obtain a permit or for failure to renew a permit, and has been issued a notice of violation under 10 CSR 40-10.070(1). The director shall give as much advance notice as practicable of the informal conference to the operator and to the person who filed the complaint that led to the notice of violation, if applicable.

1. Within thirty (30) days of the close of the informal conference, the director shall affirm, modify or vacate the notice or order in writing. Copies of the decision shall be sent to the operator.

(B) An informal conference may be requested by any person whose property, safety or health are adversely affected by a violation of the Land Reclamation Act and who requests the director for this informal conference. Within thirty (30) days of the informal conference, the director shall order the operator to adopt corrective measures as are necessary.

(C) Informal conferences are conducted by the director who shall take information from any person in attendance.

**(D). Informal Assessment Conference**

**1. The director shall arrange for an informal conference to review the proposed assessment or reassessment upon written request of the person to whom the notice or order was issued. If the request is received within fifteen (15) days from either the date of issuance of the proposed assessment/reassessment, the informal conference shall be held within sixty (60) days of the receipt of the written request.**

**2. Failure to hold these conferences within that sixty (60)-day time period shall not be grounds for dismissal.**

**3. The commission shall assign the director to hold the informal assessment conference. The conference shall not be governed by Chapter 536, RSMo regarding the requirements for formal adjudicatory hearings.**

**4. The director shall notify the person issued the notice or order, any person who caused, directly or indirectly, the issuance of the notice or order and any interested persons of the time and place of the conference.**

5. The director shall consider all relevant information on the violation within thirty (30) days after the conference is held. The director either shall--

A. Issue a proposed settlement agreement that has been prepared and signed by him/herself to the person issued the notice or order; or

B. Affirm, raise, lower or vacate the proposed penalty.

6. The director promptly shall serve the person assessed with the notice of his/her action in the form of a settlement agreement and a cover letter explaining the action or a letter and new worksheet, if required, if the penalty has been affirmed, vacated, raised or lowered.

7. If the settlement agreement is signed by the person issued the notice or order, the person assessed will be deemed to have waived all rights of further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement, the settlement agreement shall contain a clause to this effect.

8. If the settlement agreement is entered into, the agreement shall be proposed to the commission for approval or disapproval.

9. If approved, the commission shall send the person issued the notice or order a copy of the commission order and request for payment within thirty (30) days.

10. If the settlement agreement is disapproved or if payment is not made within thirty (30) days, the assessments determined by the penalty points shall be proposed to the commission at the next regularly scheduled commission meeting.

11. If the person issued notice or order does not accept a settlement agreement or any other action of the director which is a result of the informal assessment conference, s/he may request a formal review before the commission. The request shall be received by the commission within thirty (30) days of the receipt of the director's decision from the conference.

12. At any formal review proceeding, no evidence as to statements made or evidence produced by any one (1) party at an informal conference or resultant settlement agreement shall be introduced as evidence by another party or to impeach a witness.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri*

*Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

**Title 10--DEPARTMENT OF NATURAL RESOURCES**  
**Division 40--Land Reclamation Commission**  
**Chapter 10--Permit and Performance Requirements for Industrial Mineral Open Pit and**  
**In-Stream Sand and Gravel Operations**

**PROPOSED AMENDMENT**

*Purpose: Due to legislative changes to the “Land Reclamation Act” (the “Act”) in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule defines certain terms used for surface mining of minerals under 10 CSR 40-10 and in keeping with section 444.765, RSMo.*

**10 CSR 40-10.100 Definitions**

- (1) Administrative penalty. The monetary fine assessed by the commission.
- (2) Affected land. The pit area or area from which overburden has been removed or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet (50') of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one (1) acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760-444~~.789~~ .790, RSMo.
- (3) Amended permit. Involves adding an area to an existing permit area where the area added is already included in an approved long-term operation and reclamation plan. An amended permit does not require a public notice.
- (4) Applicable law. That which an operator is required to adhere to with regard to any environmental law or regulation that the Missouri Department of Natural Resources administers.
- (5) Commission. The Land Reclamation Commission in the Department of Natural Resources.
- (6) Conference, conciliation and persuasion (CC&P). The administrative means employed by the director or his/her representative to resolve or prevent an alleged violation of the law, rules, permit or conditions of the bond, including, but not limited to, informal conversations, telephone conversations and letters issued by the director.
- (7) Consolidated material. Any naturally formed aggregate or mass of mineral matter which is firm and coherent and that cannot be excavated by normal construction equipment. Material requires blasting to be excavated.
- (8) Director. The staff director of the Land Reclamation Commission.
- (9) Fill dirt. Material excavated for use as construction fill which does not have a distinctive physical property matching one of the minerals listed under 10 CSR 40-10.010(1) and which will not be refined into one of those minerals. Backfill material for use in completing reclamation is not included in this definition.
- (10) Flood plain. Geographic areas susceptible to periodic inundation from overflow of natural waterways.

(11) Habitual violator. A person, permittee or operator that has established a pattern of violations of any requirements of the Land Reclamation Act, its corresponding regulations or the permit is defined here as any person or permittee who has-

- (A) Three (3) similar violations in any six (6) or less inspections;
- (B) Five (5) violations in any ten (10) or fewer inspections; or
- (C) Three (3) or more violations in three (3) consecutive inspections.

**(12) Industrial uses. An area reclaimed for industrial purposes that is properly stabilized from erosion by means other than vegetation.**

[(12)] **(13)** In-stream sand and gravel operator. An operator whose entire extraction operation occurs on areas between the defined river or creek banks that are covered by water or are saturated by water throughout the entire year.

[(13)] **(14)** Lateral support. Undisturbed material left in place, with unconsolidated material left in place at no more than a forty degree (40 ) grade, to prevent sloughing of the adjacent right-of-way of a public road, street or highway.

[(14)] **(15)** Mine expansion. Involves expansions to the area beyond the area described in an existing operation and reclamation plan. With the exception of a permit fee, a mine expansion requires an application equal to a new permit. An expansion may be requested at any time during the term of an existing permit and requires the filing of a new public notice.

[(15)] **(16)** Mineral or industrial mineral. A constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source or raw material for manufacturing or construction material. For the purposes of this section, this definition also includes barite, tar sands shale, sand, sandstone, limestone, granite, clay, traprock and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas, together with other chemicals recovered.

[(16)] **(17)** New permit. Permits issued for the first time where a new permit number is assigned. All requirements of 10 CSR 40-10.020 apply.

[(17)] **(18)** Notice of violation. The document that is sent by the director to the operator describing the nature of a violation(s) of any law, rule, permit or condition of the bond, the corrective measures to be taken to abate the violation(s) and a time period for abatement of the violation(s). This definition shall include the notice itself, any modification, termination or vacation of the notice of violation itself by subsequent actions taken by the director or the commission.

[(18)] **(19)** Operator. Any person, firm or corporation engaged in and controlling a surface mining operation.

[(19)] **(20)** Overburden. All of the earth and other materials which lie above natural deposits of minerals and also means the earth and other materials disturbed from their natural state in the process of surface mining. **This definition does not include the mineral that is being mined at the surface mining operation.**

[(20)] **(21)** Peak. A projecting point of overburden created in the surface mining process.

[(21)] **(22)** Permit period. The length of time for which the permit is issued, a one (1)-year period.

[(22)] **(23)** Pit. The place where minerals are being or have been extracted by surface mining.

[(23)] **(24)** Refuse. All waste material directly connected with the cleaning and preparation of substance mined by surface mining.

[(24)] (25) Renewed permit. Involves only extending the term of an existing permit by another year.

[(25)] (26) Revised operations. Involves the substantial revision of the mining methods of an existing operation and reclamation plan. This revision does not involve the addition of new areas to the permit. A revision is substantial if the changes clearly exceed the scope of activity authorized by the permit in effect at the time or measurably increases the potential affects on public health, safety and livelihood.

[(26)] (27) Ridge. A lengthened elevation of overburden created in the surface mining process.

[(27)] (28) Site or mining site. Any location or group of associated locations where minerals are being surface mined by the same operator.

[(28)] (29) Surety bond. A joint undertaking by the permittee as principal and the surety where the surety is obligated to pay Missouri the face amount of the bond should the reclamation not be completed by the permittee.

[(29)] (30) Surface mining. The mining of minerals for commercial purposes by removing the overburden lying above natural deposits of the minerals, and mining directly from the natural deposits exposed and shall include mining of exposed natural deposits of these minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operators for these minerals.

[(30)] (31) Unconsolidated material. Material which can be removed and handled by normal construction equipment without blasting.

[(31)] (32) Violation.

(A) Major Violation. The violation poses a high likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a substantial adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or a combination of these.

(B) Minor Violation. The violation poses a low likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a low adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or it has a minor potential for harm and a minor deviation from the requirements of the law and regulations or a combination of these.

*AUTHORITY: sections 444.767, RSMo (Cum. Supp. 2001), 444.772, RSMo (Cum. Supp. 2001) and 444.784, RSMo (Cum. Supp. 2001). \* Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. \*Original authority: 444.767, RSMo (1971), amended 1990, 1993, 2001; 444.772, RSMo (1971), amended 1984, 1990, 1992, 2001; and 444.784, RSMo (1971), amended 1990 and 2001.*

*Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.*

*Private Cost: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate*

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri.*

*Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*